

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**DAVID J. ATENCIO,**

**Plaintiff,**

**v.**

**No. 13-cv-1078 KG/SMV**

**S. NEW MEXICO CORR. FACILITY,  
CORIZON HEALTH, JAMES KACZMAREK,  
SANTIAGO LERMA, CHUCK EVANS,  
CHRIS BARELA, and KELLI MARABLE,**

**Defendants.**

**ORDER SUSTAINING DEFENDANTS' OBJECTION  
TO PLAINTIFF'S DISCOVERY REQUESTS**

THIS MATTER is before the Court on Defendants James Kaczmarek, Santiago Lerma, Chuck Evans, and Chris Barela's ("Defendants") Objection to Plaintiff's Issuance/Request for Discovery [Doc. 22], filed on June 30, 2014. Apparently, Plaintiff has propounded discovery requests on Defendants. However, because this is a civil rights action brought by an incarcerated plaintiff, it is excluded from the usual pretrial case management procedures. *See* D.N.M.LR-Civ. 16.3(d). No scheduling order has been entered in this case, nor have the parties agreed to conduct discovery on their own. *See* D.N.M.LR-Civ 26.4(a); *see also* D.N.M.LR-Civ. 26.5(a) (courts may fashion discovery sua sponte in § 1983 proceedings brought by pro se inmate litigants). Accordingly, Plaintiff is not entitled to discovery at this time. Therefore, Defendants' objection will be sustained. Defendants are not required to respond to Plaintiff's discovery requests at this time.

In a suit brought by a pro se prisoner, instead of the traditional discovery process, the Court may order the defendants to investigate the incident underlying the suit and to submit a report of the investigation, known as a “*Martinez* report.” *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991); *see Martinez v. Aaron*, 570 F.2d 317, 319–20 (10th Cir. 1978) (affirming the propriety and necessity of such reports). The *Martinez* report assists the Court in determining whether there is a factual and legal basis for the prisoner’s claims. *Hall*, 935 F.2d at 1109. In this case, the Court is still reviewing the record to determine a *Martinez* report will be required.

**IT IS THEREFORE ORDERED** Defendants’ Objection to Plaintiff’s Issuance/Request for Discovery [Doc. 22] is **SUSTAINED**. Defendants are relieved of any duty to respond to Plaintiff’s discovery requests until further order of the Court.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**